

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

OCTAVIOUS HODGES,)	
)	
Petitioner,)	
v.)	Case No. CIV-13-249-M
)	
TIM WILKINSON, et al.,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, has filed a motion for leave to proceed *in forma pauperis* and supporting documents. Pursuant to an order entered by Chief United States District Vicki Miles-LaGrange, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed the motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5.00. On April 3, 2013 the Petitioner submitted a motion to proceed *in forma pauperis* and financial documentation, **ECF No. 5**. The Petitioner's offender statement report indicates \$48.46 available in the Petitioner's prisoner savings accounts. Oklahoma Department of Corrections Policy 120230.I.A.2 allows Mandatory Savings Account balances to be used to pay fees and/or court costs associated in filing a civil or criminal action. Because he does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion, **ECF No. 5**, be **DENIED** and that he be ordered to prepay the full \$5.00 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). *Lister v. Department*

of the Treasury, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should issue a report and recommendation when denying motion to proceed *in forma pauperis*).

It is further recommended that this action be dismissed without prejudice to refiling unless Petitioner pays the \$5.00 filing fee in full to the Clerk of the Court within **twenty (20) days** of any order adopting this Report and Recommendation.

Petitioner is advised that he may file an objection to this Report and Recommendation with the Clerk of this Court by **April 29, 2013**. Petitioner is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F. 2d 656 (10th Cir. 1991).

The Clerk is not to forward a copy of the petition to the appropriate state agency until further order of the Court. **This terminates the referral to the undersigned Magistrate Judge unless and until the matter is re-referred.**

ENTERED on April 11, 2013.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE